IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FIFTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 12860 of 2004

Between:

G.Jangaiah, s/o.Rajaiah,
H.No.12-13,Annapurna Colony, Uppal Kalan, RR Dist.

..... PETITIONER

AND

1 The Dy.Registrar/Arbitrator, C.S.OSD/FR 127, Charminar Co-operative Urban Bank,
Mallepally, Hyderabad.
2 The Chairman Co-operative Urban Bank, Mallepally, Hyderabad.
3 Mr.Aij Arul Raj, S/o.Irudinathan,H.No.1-1-58/7/33, Room No.4,
5th floor, Srinath Complex, Secunderabad.
4 Mr.G.Sanjeeva Rao, s/o.Veeraiah, H.No.6-4-256, Bholakpur, Secunderabad.
5 K.Mariadas, S/o.K.China shann,C-17, Dad Quaters, Vasavinagar,
Tirumalagiri post, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction particularly in the nature of writ of Mandamus by declaring the action of the respondent No. 1 and 2 in proceeding with execution of the ex-parte order dated 15-12-2003 in ARC No. 37710 of 2002 by filing the E.P.No.7 of 2004 and in issuing the letter dated 5-7-2004 calling the petitioner to pay an amount of Rs.5,72,588/- on or before 20-7-2004 pending disposal of the application filed for set-aside as arbitrary, illegal, unjust and in violation of the provision contemplated in the A.P. Co- operative Act and in violation of provisions of the C.P.C. and in violation of the safe guards provided under the Constitution of India and consequently direct the Respondent No1 and 2 herein not proceed further in E.P.No.7 of 2002 in ARC No.37710 of 2002 pending disposal of application dated

23-2-2004 for set-aside the ex-parte order dated 15-12-2003 in ARC No.37710 of 2002.

Counsel for the Petitioner: MR.P.MEHAR SRINIVASA RAO

Counsel for the Respondent No.: MR.N.RAMAMOHANA RAO

The Court made the following :

ORDER :

The petitioner seeks a writ of mandamus declaring the action of the 1st respondent in proceeding with the execution of the ex-parte order, dated 15-12-2003 in ARC.No.37710 of 2002 by filling the E.P.No.7 of 2004, as arbitrary and illegal.

Heard the learned counsel for the petitioner, learned Government Pleader appearing for the 1st respondent and Sri Nooti Ramamohana Rao, learned counsel appearing for the 2nd respondent-Bank.

As could be seen from the affidavit filed in support of the writ petition, the grievance of the petitioner is that an ex-parte award has been passed on 15-12-2003 by the 1st respondent and though the petitioner made an application on 23.02.2004 to set aside the ex-parte award, the same has been kept pending, but, in the meanwhile, the respondents 1 and 2 initiated execution proceedings by filing E.P.No.7 of 2004. In pursuance of the same, the impugned notice dated 5-7-2004 has been issued attaching the immovable property mentioned in the schedule and calling upon the petitioner to pay the amounts due on or before 20-07-2004, failing which the property will be brought to sale.

The learned Counsel for the petitioner contends that the action of the respondents 1 and 2 in issuing the impugned notice while keeping the application for setting aside the ex parte award is arbitrary and illegal.

The learned Counsel for the respondents 1 and 2 did not dispute the fact that the application filed by the petitioner is pending.

Having regard to facts and circumstances of the case and keeping in view that the application made by the petitioner for setting aside the

ex-parte order is still pending before the 1st respondent, I deem it appropriate to dispose of the writ petition with a direction to the 1st respondent to consider the application filed by the petitioner to set aside the ex-parte award and pass

appropriate orders in accordance with law after notice to the petitioner and respondents 2 to 5 as expeditiously as possible preferably within a period of four weeks from the date of receipt of this order. Till such order is passed, the respondents 1 and 2 shall not proceed further in pursuance of the impugned notice, dated 05-07-2994.

Accordingly, the writ petition is disposed of. No order as to costs.

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05-08-2004

klp

To

1 The Dy.Registrar/Arbitrator, C.S.OSD/FR 127, Charminar Co-operative Urban Bank,
Mallepally, Hyderabad.
2 The Chairman Co-operative Urban Bank, Mallepally, Hyderabad.
3 Two C.D. copies